

1 The opinion in support of the decision being entered
2 today is *not* binding precedent of the Board.
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4
5 UNITED STATES PATENT AND TRADEMARK OFFICE
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7
8 BEFORE THE BOARD OF PATENT APPEALS
9 AND INTERFERENCES
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11
12 *Ex parte* WILLIAM A. HALL
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15 Appeal No. 2006-3068
16 Application No. 10/721,299
17 Technology Center 3700
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20 Decided: October 18, 2007
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23 Before TERRY J. OWENS, JENNIFER D. BAHR, and ROBERT E. NAPPI,
24 *Administrative Patent Judges*.

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26 OWENS, *Administrative Patent Judge*.
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29 DECISION ON REQUEST FOR REHEARING

30 The Appellant requests reconsideration of our decision mailed April 11,
31 2007 wherein we affirmed the rejections of claims 1-5, 7-9, 11-14, 16-18 and 20
32 under 35 U.S.C. § 102(b) as anticipated by Peeples (US 5,964,365), claims 6 and
33 15 under 35 U.S.C. § 103 as obvious over Peeples, and claims 10 and 19 under
34 35 U.S.C. § 103 as obvious over Peeples in view of the Appellant's admitted prior
35 art (Request 1).

The Appellant argues the following claims: 1) claim 1, 2) claims 7 and 8, 3) claim 14, and 4) claims 6 and 15 (Request 2-5).

Claim 1

Regarding the “means for attaching the body second end to packaging of a food product” limitation in claim 1 the Appellant correctly points out that the Board referred to the disclosed means as a snug fit between the tubular body’s second end and the packaging whereas the language used in the Appellant’s Specification at page 7, lines 8 and 15 is “tight, sealing fit.” The Appellant argues that Peeples discloses engagement between a pan’s side walls (34) and the vertical portion (42) of a collar (20) (col. 3, ll. 62-64), and that Peeples’s engagement-providing structure is not capable of providing a tight, sealing fit (Request 3). The Appellant’s Specification uses “tight sealing fit” with respect to the embodiment in figures 1 and 2 (Spec. 7:6-15). However, the Specification states that the apparatus in figures 3 and 4 is “basically the same as that shown in Figures 1 and 2, except that it is designed for use with a food product (68) having a rectangular cross section, for example, brick cheese” (Spec. 8:14-18). With respect to the embodiment in figures 3 and 4 the Appellant’s Specification does not state that the attachment provides a tight sealing fit. Hence, the Appellant’s Specification does not require the “means for attaching” in claim 1 to be a structure that provides the tight sealing fit argued by the Appellant. Regardless, claim 1 does not recite that the food product is part of the claimed apparatus. The tight sealing fit is obtained by the tubular body’s second end stretching slightly when placed around a food package if the tubular body is flexible or, if the tubular body is rigid, by the tubular body’s second end compressing a compressible food package (Spec. 7:6-15). Although Peeples discloses that the vertical wall portion engages a pan (col. 3, ll. 62-64), that vertical portion is capable of engaging any type of food package fitted

1 therein instead of the pan, including food packages that are compressible. Hence,
2 regardless of whether Peeples's vertical wall portion (42) is flexible or rigid, it is
3 capable of forming a tight sealing fit in the same manner as the Appellant's tubular
4 body's second end – by squeezing a compressible food package if the vertical wall
5 portion is rigid or by stretching around a food package if the vertical wall portion is
6 flexible.

7 Claims 7 and 8

8 In our decision we stated that because Peeples's collar flange 24 and collar
9 ridge 26 both are parts of a single rim-like top portion of collar 20 (fig. 5A),
10 together they reasonably can be considered a rim that projects outwardly from the
11 collar body and is engaged by the lip of a lid (60) (Decision 5). The Appellant
12 argues that the test for anticipation is whether a prior art reference identically
13 shows a claimed element, not whether it reasonably can be considered to show that
14 element (Request 3-4). If Peeples discloses what we stated it reasonably can be
15 considered to show, then Peeples identically shows the limitations of claims 7
16 and 8. The Appellant does not argue that Peeples fails to show what we stated it
17 reasonably can be considered to show. Hence, we are not convinced by the
18 Appellant's argument that Peeples does not identically show the subject matter of
19 claims 7 and 8 (Request 4).

20 Claim 14

21 The Appellant argues that the Board's statement that the Appellant's
22 Specification does not define "food packaging" is incorrect because the first
23 sentence of the Specification states that the invention is a food packaging closure
24 device for food products such as sausages, cookie dough and brick cheese, and the
25 Specification at page 1, line 9 to page 2, line 17 further describes the type of food
26 packaging with which the closure device is used (Request 4). The "such as"

1 language in the first sentence of the Specification does not define “food
2 packaging” but, rather, merely gives examples of foods that the package can
3 contain. The Appellant’s Specification at page 1, line 9 to page 2, line 17 merely
4 gives examples of other foods that can be packaged such as sausage and
5 hamburger. Hence, we are not persuaded that the dictionary definition of
6 “packaging” relied upon in our decision (Decision 5) is not the broadest reasonable
7 interpretation of “packaging” in view of the Appellant’s Specification.

8 The Appellant argues that Peeples does not disclose “positioning the second
9 end of the tubular body on the food product so that the tubular body extends
10 around the food packaging opening” (Request 5). The Appellant’s Specification
11 indicates that “on the food product” means on the packaging containing the food
12 product (Spec. 7:1-15; 8:21 – 9:12; figs. 2, 4). Because Peeples’s pan or dish can
13 be for food preparation, presentation and storage (col. 1, ll. 8-9), it is a food
14 package. When Peeples’s pan or dish is placed in the collar (20) such that the
15 vertical portion (42) of the collar engages the pan or dish (col. 3, ll. 62-64), the
16 vertical portion (which corresponds to the Appellant’s second end of the tubular
17 body) is positioned on the food product in the pan or dish such that the vertical
18 portion extends around the opening of the pan or dish (fig. 5A).

19 Claims 6 and 15

20 The Appellant argues that because Peeples is silent as to whether the collar
21 is rigid or resilient, Peeples fails to anticipate the subject matter of claims 6 and 15
22 (Request 5). That argument is not well taken because claims 6 and 15 are rejected
23 as being obvious, not anticipated. A resilient collar would have been obvious to
24 one of ordinary skill in the art as explained in our decision (Decision 6).

25 For the above reasons we decline to make any change to our decision.

REHEARING DENIED

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